

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10790 OF 1994

WITH

SPECIAL CIVIL APPLICATION NO. 10791 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?
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SHRI UTTAR PRADESH CO.OP. HOUSING SOCIETY LTD.

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioners

MR VB GHARANIYA, AGP for Respondent No. 1 to 4

MR KV SHELAT FOR MR EE SAEED, for Respondent No. 5

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-24/03/99

ORAL COMMON JUDGEMENT

These two petitions are connected and related to one and the same subject matter and hence both the petitions are being disposed of by this common judgment.

2. The first petition has been filed for a direction to the respondents not to remove the name of the petitioners from the revenue records without verifying the actual possession over the land in dispute. While the second petition has been filed for quashing and setting aside the order dated 1-9-94 of the Secretary, Revenue Department (Appeals), Government of Gujarat, Ahmedabad in Revision No. SRD/HKP/AD/25/94 whereby the order dated 3-5-1994 of the Collector, Ahmedabad recorded in case No. NB/RAC(e)/A/142/93 and 143/93 and the order of the Deputy Collector, Ahmedabad dated 30-9-1993 in RTS Appeal No. 34/93 and 35/93 in respect of the revenue entries No. 6594 and 6682 regarding the portion of 3526 sq.mtr.. of Survey No. 1162 Paiki of village Vejalpur have been set aside.

3. It is not disputed that Shambhubhai Bechardas Patel was the owner of land bearing Survey Nos. 1162 and 356 and sold 3000 sq. mtr. to Prasanna Cooperative Society out of the land of two aforesaid survey numbers. He executed the will on 6-11-1989 to the effect that he had received sale consideration of the remaining land bearing Survey No. 1162 and 356 being final plot No. 42/2 and 42/1 in Town Planning Scheme and no amount was to be recovered from Shri Uttar Pradesh Coop. Housing Society. He could not execute the sale deed because of the technical reasons during his life time. After his death the Shri Uttar Pradesh Coop. Housing Society would be the absolute owner of the aforesaid land. He has appointed Vijaykumar Hathisingh Shah as a power of attorney to execute an agreement to sell to Shri Uttar Pradesh Cooperative Housing Society Ltd. whose registration no. is Gha-1079. The agreement to sell has already been executed in favour of Shri Uttar Pradesh Coop. Housing Society Ltd. with his consent and knowledge. Any amount regarding the sale consideration or profit or loss is not to be recovered and shall not be recovered in future by him. Even if there is any increase or decrease in the area of Survey No. 1162 and 356 then also neither he nor the purchaser shall take any objection. Under the said will Shambhubhai Bechardas Patel authorized that after his death Shri Uttar Pradesh Cooperative Housing Society Ltd. shall be the absolute owner of the remaining land of Survey Nos. 1162 and 356 with all the rights available in the town planning scheme. After his death the aforesaid Society shall be an independent owner of the said land. Any objection and contention of any other person, Mandali, relative, heir or representative shall not be maintainable and the Society shall be entitled to use the land as per its

desire. It is made clear that in the government record the area of the said surveys no. 1162 and 356 admeasuring 2 acre - 13 Gs and 1 Acre - 29 Gs. respectively, 3000 sq. mtr. of the land from Survey No. 356 has been sold to Prasanna Coop. Housing Society Ltd. and the will was to be treated regarding the remaining land of the aforesaid both survey number after deducting the area of 3000 sq. mtr. of land sold to Prasanna Coop. Housing Society Ltd. It was also mentioned therein that the sole executor appointed by him under the will Vijaykumar Hathsingh Shah was required to do all the necessary proceedings and obtain necessary permission regarding the entire land of both survey numbers aforesaid like sale deed, declaration, agreement under the Urban Land Ceiling Act, N.O.C., N.A. as well as he will do all Government or semi government work and other legal work pertaining to this land. No person will have any objection. An uncertified copy of the will dated 6-11-89 has been filed during the course of arguments by each of the parties.

4. Pursuant to the will dated 6-11-1989 Vijaykumar Hathsingh Shah the executant has executed the sale on 6-1-1990 in favour of Shri Uttar Pradesh Coop. Housing Society Ltd. in respect of the agricultural land of survey no. 1162 paiki admeasuring 2 acre - 13 gunthas. The proposed Town Planning Scheme No. 6 was made applicable to this land and it was given final plot no. 42/2, as per proposed Town Planning Scheme it was approximately 7245 sq. mtr. and that Town Planning Scheme was not finalized at that time. The vendor handed over the actual possession of the said land bearing survey no. 1162 paiki of 2 Acre - 13 Gunthas admeasuring 7245 sq. mtr. at the value of Rs. 1,81,125/- at the rate of Rs. 25/- per sq. mt. of the land along with all rights and easement rights. Ahmedabad Urban Development Authority gives whatever area of the Final Plot, if there is any increase or decrease the vendor will not ask for any compensation or value from the vendee. Similarly, the vendee will not claim any damage. The said land was exempted u/s 20 (1) of the Urban Land Ceiling and Regulation Act, 1976 by the order dated 7-12-1989. It is mentioned in para 8 of the sale deed that the possession and enjoyment of the area is not in conformity as shown in annexure - A included with the sale deed. There appears to be more area approximately 3526 sq. mtr. according to the village form no. 7-12. If area is increased than the area shown in the village form no. 7-12 without paying additional sale consideration the transferee would be the independent owners of the additional area and that additional amount

of the consideration is included in the amount of sale consideration of the said land paid to deceased Shambhubhai Bechardas Patel in his presence. By this deed amongst three parties with clear understanding or confirming party will not have any right of claim or compensation or sale consideration of the land towards the additional area from the vendee society. After getting the measurement made in accordance with the prevailing government rules the vendee can take an action to get the additional land than the land shown in the present revenue record mutated in its name and neither its vendee nor the confirming the party will have any objection or dispute in the Society if the vendee becomes the owner thereafter. It is also made clear that such additional value of the land is included in the sale consideration and if there is any additional area of the aforesaid survey no. 1162 and 356 it will be of the vendee. In para 9 of the sale deed it has been mentioned that the deceased Shambubhai Becharbhai Patel in his presence had handed over the actual possession of the aforesaid land which the vendee has admitted on the date of execution of the sale deed and there is no dispute between the vendee and vendor as regards the sale consideration and possession of the land. In para 12 of the sale deed it is stated that the vendee was required to get the land transferred in its name in the record of rights with the consent and signature.

5. After execution of the sale deed the Shri Uttar Pradesh Coop. Housing Society was cancelled and partitioned on 12-3-90 into four societies and the aforesaid land came in the share and possession of the petitioners which was the registered by the document dated 20-9-1990. It appears from the record that the land bearing survey no. 1162 was running in the name of the deceased owner showing the area admeasuring 9409 sq. mtr. Some party moved an application for the actual measurement of the aforesaid land bearing Survey No. 1162 Paiki which was running in the name of deceased Shambhubhai Bechardas Patel. The City Dy. Collector, Ahmedabad after getting the actually measured the aforesaid lands came to a conclusion that 3526 sq. mtr. of land was additional that of measurement shown in the revenue record. The old survey numbers of these land were 1030 and 1031 and the boundaries of the present lands were tallying and the measurement was appeared to be correct and it was declared that the measurement of the whole area of the land was 12935 sq. mtr. Though 9409 sq. mtr. area of Survey No. 1162 paiki was running in the village record. It also appears that the town planning scheme has been implemented and a part of

the area admeasuring 2164 sq. mtr.. has been taken in the Town Planning Scheme for road etc. The proposed town planning scheme was also made applicable to the land in dispute and it was given final plot number 42/2. As per the proposed town planning scheme the area approximately 7245 sq. mtr. of the land in dispute was given final plot no. 42/2 though the town planning scheme was to be still finalized by that time. It was expected that certain portion of the land admeasuring about 2164 sq. mtr. out of Survey no. 1162 paiki was to be left for road in the proposed town planning scheme. After deducting the portion for road etc. in town planning scheme, remaining portion of the land admeasuring 7245 sq. mtr. out of 9409 sq. mtr. which was the measurement running in the village record, was valued for Rs. 1,81,125/- at the rate of Rs. 25/-/- per sq. mtr. in the sale deed, as the town planning scheme was not finalized and it was to be ascertained what was the actual measurement of the area of the survey number 1162 paiki running in the name of the deceased Shambhubhai Bechardas Patel. When the Shri Uttar Pradesh Coop. Housing Society Ltd. purchased the land, area only 7245 sq. mtr. out of the total area of the plot shown in the record as 9409 sq. mtr. and after deducting area falling in the town planning scheme for road, etc., was given Final Plot No. 42/2 in the Town Planning Scheme. It was mentioned in the sale deed that it is the land bearing Survey No. 1162 Paiki admeasuring 2 Acre 13 Gs. - 7245 sq. mtr. at the value of Rs. 1,81,125/at the rate of Rs. 25/- per sq. mtr. Though the parties were vigilant that the area of that plot was much more than the area mentioned in the record of right i.e. village form no. 7-12 and that is why in para 8 of the sale deed it is mentioned that there appears to be more area approximately 3526 sq. mtr. than shown in the village form no. 7-12. After the execution of the sale deed first entry No. 5998 dated 26-3-90 was made showing the Shri Uttar Pradesh Coop. Housing Society Ltd. as owner of Survey No. 1162 paiki over area 7245 sq. mtr. and remaining in the name of the executor. The whole area on the basis of the survey by the Dy. Collector was recorded and corrected by the entry no. 6541 dated 1-9-92 in the name of the deceased owner through the executor showing the total area 12935 sq. mtr. and that entry was approved and certified on 16-10-1992. By entry No. 6585 dated 24-12-92 the land of survey no. 1162 was shown as A/1/7 and that entry was certified on 8-4-1993, as under:

- (i) Survey No. 1162 A/1/7/1 area 9409 sq. mtr. in the name of Shri Uttar Pradesh Coop.

Housing Society Ltd. and Acharya Buddhisagar
Coop. Housing Society Ltd.

(ii) Survey No. 1162 A/1/7/2 area 3526 sq.
mtr. in the name of sole executor.

6. By entry no. 6594 dated 24-12-1992 was certified on 15-7-93 over survey no. 1162 - A/1/7/2 was changed in the name of the Shri Uttar Pradesh Coop. Housing Society Ltd. deleting the name of the executor though the Shri Uttar Pradesh Coop. Housing Society Ltd. had already ceased to exist. Both the entries no. 6585 and 6594 dated 24-12-1992 were certified on 15-7-93. By entry no. 6594 Survey No. 1162 A/1/7/2 was shown in the name of Shri Uttar Pradesh Coop. Housing Society Ltd. though the said society had already ceased to exist on 12-3-90. By entry no. 6682 dated 1-4-93 regarding Survey No. 1162 A/1/7/2 the name of both the petitioners were entered on the additional land admeasuring 3526 sq. mtr.

7. From the entries stated above it appears that when the entries were made in the name of both the petitioners regarding the whole land purchased by the Shri Uttar Pradesh Coop. Housing Society Ltd. divided in both the petitioners, the executor - respondent no. 5 being aggrieved filed the appeals bearing R.T.S. Appeal No. 34/93 and R.T.S. Appeal No. 35/93 under rule 108(5) of the Land Revenue Rules 1972 and Section 209 of the Bombay Land Revenue Act. before the Dy. Collector. The Dy. Collector dismissed both the appeal vide order dated 30-9-1993 holding that entry no. 6594 was got entered by the appellant himself as they have sold the entire land of survey no.1162 "Paiki" owned by them, as such, the appellant was not justified to raise the objection against the said entry, Entry No. 6682 which is supplementary entry recent one. The said excess land admeasuring 3526 sq. mtr. has been sold and he has waived his right over the same land. The Government has released the land of Survey No. 1162 Paiki and survey No. 356 of final plot no. 41/1 and 41/2 under Section 20(i) of the Urban Land Ceiling Act and the permission was also granted u/s 63 of the Bombay Tenancy and Agricultural Lands Act with respect to the disputed property i.e. total area of 11565 sq. mtr. of land and there was no necessity to obtain the permission for release u/s 20(1) of the Urban Land Ceiling Act regarding disputed portion of that land. The names of the petitioners were entered into revenue record i.e. village form no. 7-12 on the basis of the sale deed and the order with respect to the aforesaid survey number those entries were approved and certified.

8. Executant Vijaykumar Hathsingh Shah filed a revision application under Rule 108 (vi) of the Bombay Land Revenue Code before the Collector, Ahmedabad against the judgment and order of the Dy. Collector. The Dy. Collector has also dismissed the revision application of the appellant vide his order dated 3-5-93 holding that this property was sold by him to Shri Uttar Pradesh Coop. Housing Society Ltd. 6-1-1990 by a registered sale deed. In para 8 of the sale deed it is stated that 3526 sq. mtr. of land appears to be in excess and the same has been sold. The name of the appellant was entered under entry no. 6585 but as this property had already been sold by the executor to Shri Uttar Pradesh Coop. Housing Society it was mutated in the name of Uttar Pradesh Coop. Housing Society. On granting permission for partition by the District Registrar, Coop. Societies vide order dated 12-3-1990 that Society had ceased to exist and four other cooperative societies came into existence out of which these petitioners were allotted the disputed land and therefore under entry no. 6682 with respect to the property in dispute the names of these petitioners have been entered. As the appellant has sold the disputed property he has no right to raise any objection or dispute with respect to the this property and there was no question of making Shri Uttar Pradesh Coop. Housing Society Ltd. as an applicant in the revision applications.

9. The executor again filed revision application before the the Secretary, Revenue Department (Appeals), Government of Gujarat u/s 211 of the Bombay Land Revenue Act, 1879 who allowed the revision applications by the order dated 31-8-1994 on the ground that the intention to sell the whole property does not appear from paragraph no. 9 of the sale deed as the stake was fixed only for sale consideration of the land admeasuring 7245 sq. mtr. As such, the remaining portion admeasuring 3526 sq. mtr. was not sold. The permission u/s 63 of the Bombay Tenancy and Agricultural Lands Act was not granted in respect of the land admeasuring 3526 sq. mtr. The order u/s 20(1) of the Urban Land Ceiling Act was granted only in respect of the land admeasuring 7245 sq. mtr. There is no mention about inclusion of the land admeasuring 3526 sq. mtr. therein. Survey was conducted and "Hissa" survey was filed and separate number was given in respect of the land admeasuring 3526 sq. mtr. as A/1/7/2. Hissa survey was confirmed and is still continue and that Hissa survey was also approved. If any entry is made and approved in favour of the society which is not in existence was not lawful. But the entry made

in the names of the petitioners do not appear to be properly approved without revoking entries No. 6585, 6594 in appeal or revision and making change entry no. 6682 in favour of the petitioners does not appear to be lawful. The land was sold to the petitioners and share of the petitioners does not include the land admeasuring 3562 sq. mtr. Entry no. 6682 has been made pursuant to the certificate dated 13-3-1990 which does not appear to be lawful.

10. Heard learned counsel for the parties at length who have filed their compilations and perused the relevant papers.

11. The matter has been considered by the authorities i. e (i) approving the entries made in favour of the petitioners (ii) by the appellate authority as well as (iii) by another appellate authority by way of revision and they have recorded the fact finding which are concurrent and the Government should not have brushed aside the concurrent findings recorded by the approving authorities, the appellate authority - Dy. Collector and revisional authority Collector, on the basis of the original record. In revisional jurisdiction, the Government cannot substitute its own finding even it is erroneous. It could have directed the approving authority to make further inquiry or to pass appropriate orders regarding the relevant entries in respect of the land in dispute on the basis of prima facie evidence of possession of the party concerned which was handed over by the sale deed.

12. Learned counsel for the respondents contended that this petition is in respect of the revenue entries made in the village form no. 7-12 and these are the mutation entries. The petition is not maintainable under Article 227 of the Constitution of India. He relied on the case of Mrs. Rena Drego Vs. Lalchand Soni, etc. reported in AIR 1998 SC 1990 and also relied on the decision of learned Single Judge of this Court dated 4-1-1998 delivered in Special Civil Application No. 809/98 holding that the petition was not entertained into the merits placing reliance on some of decisions of this Court as well as the Supreme Court in the case of Durgaprasad Vs. Collector, reported in 1996 (5) SCC 618. It is true that the High court should not ordinarily enter into the finding of the authorities passed in the mutation proceedings. But where the fact findings recorded by the approving authority, appellate authority and Revisional Authority of the District Collector should not be set aside by the Government in revisional

jurisdiction without considering the facts and circumstances of the case and the material on record properly. At the most the Government/Secretary, Revenue Department (Appeals), under revisional jurisdiction could have directed the appropriate authority to reconsider the matter in light of the observations if made any. In the case of Mrs. Rena Drego Vs. Lalchand Soni etc. reported in AIR 1998 SC 1990 it is observed that it is now well settled principle of law that power under Article 227 of the Constitution of India is one of the judicial superintendence which cannot be used to upset the conclusions of facts, however, erroneous these may be, unless such conclusions are so perverse or so unreasonable, that no court could ever have reached them. On the basis of this observation, this Court has power to entertain the petition under Article 227 of the Constitution of India where the conclusions are so perverse or unreasonable that no Court could ever reach them. In other words, the writ petition can be entertained and decided under Article 227 of the Constitution of India if there are sufficient reasons as stated above in the observations of the Supreme Court.

13. The learned counsel for the executor Respondent no. 5 argued that entry No. 6585 and 6594 were made and also approved should not have been revoked unless an opportunity is given to the parties concerned as required under Sec. 135 (c) (d) of the Bombay Land Revenue Code and no notice was issued in respect of the impugned entries no. 6682 to the respondent - executor. When entry no. 6682 was made registered two documents of partition dated 20-9-1990 were not considered and they were the relevant documents and there was no application made by the petitioners for revocation or modification of the earlier approved entries no. 6585 and 6594. It is further argued that even it is assumed the additional land was also included in the sale deed, release u/s 20 of the Urban Land Ceiling Act and permission u/s 63 of the Bombay Tenancy and Agricultural Lands were not granted in respect of the land admeasuring 3526 sq. mtr. As such, the transfer is illegal and the petitioners will not get anything. The petitioners cannot claim much more than the land given to them by the registered document dated 20-9-1990.

14. The mutation proceedings are in respect of the entries made in the village form no. 7-12 - record of rights regarding the land of the village or town to show that person in whose name the entry is running is an occupant as owner or tenant in the year concerned. The record of rights are maintained in the form of entries

made in the village form no. 7-12 in favour of the persons and the entries are mutated or modified on the basis of the prima facie evidence of rights of occupant as an occupant or tenant. They are best proof of occupancy of the person as an owner or as a tenant. Of course they are not conclusive unless declared otherwise by the Court of law in the regular proceedings. They show the persons responsible for the payment of land revenue. They are used in the summary proceedings u/s 145 of the Cri. Pro. Code and in other proceedings of the regular suit for declaration of rights, to prove possession of the person in whose favour the entry is made. No doubt, the procedure has been laid down for correction, modification or deletion of those entries. The authorities are fully competent to correct them on the basis of the relevant documents or reliable evidence produced before the authorities. The entry is made by Talati-cum-Mantri at the initial stage which is certified or approved by the Mamlatdar or Tahesildar as the case may be. If the correction is challenged before the Dy. Collector who after giving an opportunity of hearing to the parties concerned decides the same in appeal. Even then any party remains unsatisfied revision application is entertainable before the Sub-Divisional Officer or Collector as the case may be under Rule 108 (5) of the Gujarat Land Revenue Rules, 1972 (hereinafter referred to as the Revenue Rules). Under Rule 108 (6) of the Revenue Rules, the Commissioner or the District Collector is entrusted with the powers of revision and if the Commissioner or the District Collector is satisfied as to regularity of such proceedings, legality and propriety of any decision or order passed in such proceedings he may pass the order modifying, annulling or reversing the findings, as he deems fit. After the order is passed under Sub-Rules 5 or 6 of Rule 108 of the Land Rules, the entry is noted in the remarks columns against the entry which is confirmed, If it alters it, the change shall be entered as a fresh. U/s 211 of the Bombay Land Revenue Code, 1879, the State Government, any revenue officer, not inferior in rank to an Assistant of Deputy Collector or a Superintendent of Survey, in their respective departments may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying as to legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. The State Government may pass such orders modifying or annulling or reversing the orders passed by the subordinate officer, provided that the Assistant or Deputy Collector shall not himself pass such an order in any matter in which a formal inquiry has been held, but shall submit the record

with his opinion to the Collector, who shall pass such order thereon as he may deem fit. Thus, if the order of Collector suffers from any infirmity, material irregularity or jurisdictional error the Government is competent to exercise its jurisdictional powers in revision application if filed by any party on its dissatisfaction. It is a well settled law that the revisional jurisdiction of the Government is very limited to reverse the facts findings recorded by the lower authorities by exercising it.

15. Thus, on the basis of the mutation proceedings the village form no. 7-12 are prepared and the entries are made in the record of rights and the persons in whose name the entries are running or made are the best persons as owners or tenants unless they are held otherwise in regular proceedings. Long procedure has been laid down by the Statute regarding correction of those entries. The record of rights should not be treated lightly as they do not confer any right and treat them as in formal nature. Thus, the entries in the record of rights are important entries and they should not be ignored as lightly.

16. In the present case, the main issue is for determination whether the entire land of Survey no. 1162 Paiki was transferred by the registered sale deed or any part thereof ? Whether the area of 3526 sq. mtr. is also included or not ? and the entry No. 6682 made in the record of rights on 14-6-1992 and proved on 15-7-1993 is correct one ? For this purpose, we have to see the intention of deceased Shambhubhai Bechardas Patel. In the will dated 6-11-1989 he has authorized the respondent no. 5 executor of the will namely Vijaykumar Hathisingh Shah to execute the sale deed in favour of Shri Uttar Pradesh Coop. Housing Society Ltd. Later on, this Society ceased to exist and land in dispute came to the petitioners. It is mentioned in the will that due to certain technicalities the deceased could not be able to execute the sale deed regarding the land bearing survey no. 1162 and 356 of village Vejalpur and the deceased directed the person holding power of attorney to execute the agreement to sell in favour of Shri Uttar Pradesh Coop. Housing Society Ltd. and the agreement was also executed. It is also mentioned therein that he has received all sale consideration and nothing remained to be recovered from the said Shri Uttar Pradesh Coop. Housing Society Ltd. Any amount regarding sale consideration or profit or loss shall also not to be recovered. Even if there is any increase or decrease in the area of survey no. 1162 and 356 neither the deceased

nor the purchaser shall have any objection. After death of the deceased, Shri Uttar Pradesh Coop. Housing Society shall be the absolute owner of the remaining land of survey no. 1162 and 356 and the Shri Uttar Pradesh Coop. Housing Society would be independent owner of that land. Area of 3000 sq. mtr. out of the land survey no. 356 has already been sold to Prasanna Coop. Housing Society and the remaining land of both the survey number after deducting area of 3000 sq. mtr. was to be considered the subject matter of the will. Thus, from the will it appears that the entire land of the aforesaid survey numbers excluding the area of 3000 sq. mtr. was transferred to the Shri Uttar Pradesh Coop. Housing Society Ltd. that area does not exclude the area of 3526 sq. mtr. The best and prima facie evidence is of the sale deed dated 6-1-90 which is executed by the respondent no. 5. In the sale deed in para 8 it is mentioned that the boarder of the survey no. 1162 paiki shown in Red ink in the map annexed as Annexure-A as per the possession and enjoyment of area is not in conformity with the boarder shown in green ink as per Government Rules and there appears to be more area of approximately 3526 sq. mtr. It is further mentioned that if the area is increased than the area shown in the village form no. 7-12 without paying any additional sale consideration, the vendee shall be the independent owner of the said additional land and the additional amount for the additional land shall be included in the amount of sale consideration of the said land which has already been paid to the deceased in his presence. None of the parties will have any claim of money, compensation or sale consideration of the land towards the additional area from the vendee society. After getting the measurements made according to the prevailing Government Rules the vendee can take action to get the additional land than shown in the present record mutated in its name and neither the vendor nor the confirming party will have any objection or dispute in respect of the same. It is further clarified that the said additional value of the land is included in the sale consideration and if there is any additional area of the aforesaid survey no. 1162, it is of the vendee. In para 9 of the sale deed it is mentioned that the deceased had handed over the actual possession of the aforesaid land to the vendee and there is no dispute between the vendor and vendee as regards the sale consideration or possession of the aforesaid land.

17. From the sale deed it is clear that the intention of the executor is that the additional land if comes out of the plot by measurement of survey no. 1162 that would

go to the vendee - Shri Uttar Pradesh Coop. Housing Society and for that land the vendee shall not be required to pay any additional sale consideration and that sale consideration was also included in the sale consideration which has already been paid by the vendee to the deceased. It appears that it was within the knowledge of the deceased as well as the executor that there is some excess land in Survey no. 1162 and that is approximately 3526 sq. mtr. and hence the executor has made mention regarding that additional land in para 8 of the sale deed that the vendee will be the owner of that property and the vendee is not required to pay any additional amount towards the sale consideration in respect of that additional plot which is approximately 3526 sq. mtr. and the possession over the entire land of survey no. 1162 had already been given to the vendee by the deceased owner in the presence of the executor.

18. Thus, both the deceased as well as the executor were aware of the fact that there is additional land about 3526 sq. mtr. in the said plot. That additional land has been transferred to the vendee by the sale deed wherein there is specific mention regarding transfer of the additional area to the vendee. From the sale deed as well as will it appears that the entire area of survey no. 1162 Paiki was transferred possession thereof was given to the vendee Shri Uttar Pradesh Coop. Housing Society Ltd.

19. Learned counsel for the respondent no. 5 contended that the land admeasuring 3526 sq. mtr. has not been sold to the vendee on the ground that in the sale deed it is mentioned in para 1 and 4 of the sale deed that the land of the present vendor with independent ownership rights and in possession and enjoyment being agricultural land of Survey No. 1162 paiki admeasuring 2 Acre and 13 Gunthas. The proposed town planning scheme no. 6 has been made applicable to the land and its final plot no. is 42-2. The area of this plot no 42-2 as per the proposed town planning scheme is approximately 7245 sq. mtr. and that town planning scheme was still not finalized. The sale deed was executed with all rights under the Town Planning Scheme of the land admeasuring 7245 sq. mtr of survey no. 1162 paiki Town Planning Scheme Final Plot NO. 42-2. By selling the land bearing Survey No. 1162 Paiki of 2 Acre - 13 Gunthas admeasuring 7245 sq. mtr. at the value of Rs.1,81,125/- at the rate of Rs. 25/-/- per sq. mtr. On the basis of these averments made in the sale deed learned counsel for the petitioner contended that the area of 7245 sq. mtr. which was calculated at the rate of Rs. 25/- per sq.

mtr. at the value of Rs.1,81,125/- was sold to the vendee and the permission u/s 63 of the Bombay Tenancy and Agricultural Lands Act was also obtained in respect of the very area of land. The release order was also passed u/s 20 of the ULC Act in respect of that area of land only. As such, the land admeasuring 7245 sq. mtr. was only transferred and not the other portion. The contention of the learned advocate for the respondent no. 5 - executor does not appear to be sound inasmuch as the assertions made in paragraphs no. 8 and 9 of the sale deed, and in the will it is mentioned that if after the measurement, the land admeasuring 3526 sq. mtr. comes out as an additional land from the plot and that is also to be included as the land was sold to the vendee. For the purpose of town planning scheme, permission and release u/s 63 of the Bombay Tenancy and Agricultural Lands and u/s 20 of the ULC Act it may be apparent that particular area was made available for transfer and that was 7245 sq. mtr. But in fact the entire area of both survey no. 1162 and 356 excluding area of 3000 sq. mtr. was transferred to the Shri Uttar Pradesh Coop. Housing Society. No portion even area 3526 sq. mtr. was reserved for the executor or any other person.

20. On the basis of the calculation of the value of the land as stated above, the Government in Revision came to the conclusion that the very part of area admeasuring 7245 sq. mtr. was sold to the petitioners and additional area of 3526 sq. mtr. is not mentioned in the permission and release u/s 63 of the Bombay Tenancy and Agricultural Lands act and u/s 20 of the ULC Act respectively. But in my opinion it would not amount that the additional land was not sold to the the Shri Uttar Pradesh Coop. Housing Society which later on came to the petitioners, inasmuch as the entire area of the survey no.1162 paiki was not measured before the execution of the sale deed. the release order and permission were got obtained on the basis of the area of the survey no. 1162 paiki running in the name of the deceased owner in the village record. From the sale deed it appears that the possession has already been delivered after receiving sale consideration of the entire area, prior to the execution of the sale deed.

21. After execution of the sale deed it appears that the parties applied for measurement of the aforesaid survey number to the City Deputy Collector, Ahmedabad the land in question which was measured and the measurement of this survey number was not tallied with measurement running in the revenue record. The old survey numbers of this land were 1030 and 1031. The City Dy. Collector

came to the conclusion that the measurement of survey no. 1162 should be 12935 sq. mtr. in place of 9409 sq. mtr. which was in the record and it appears that the land admeasuring 2164 sq. mtr. fell in the town planning scheme for road etc. as the area of the plot was mentioned as 9409 sq. mtr. Hence after excluding the area 2164 from 9409 sq. mtr. it was shown in the sale deed that 7245 sq. mtr. is the area of that plot which has been given final plot no. 42/2 in Town Planning Scheme. But after calculating the entire area which is 12935 sq. mtr. deducting 2164 sq. mtr. and 3526 sq. mtr. it would come to 7245 sq. mtr. As such, the additional area of 3526 sq mtr. came in existence after measurement of the entire plot. For that plot now, the respondent no. 5 is claiming as of his ownership and he got it mutated in his own name though this land is specially mentioned in the sale deed as additional land which has already been transferred to Shri Uttar Pradesh Coop. Housing Society. Thus, the area sold to the vendee Shri Uttar Pradesh Coop. Housing Society included the area admeasuring 3526 sq. mtr. and that was also sold to the vendee.

22. Shri Uttar Pradesh Coop. Housing Society Ltd. has been divided into four societies and the land in dispute included 7245 sq. mtr. and survey no. 1162 came into allotment of the petitioners.

23. Thus, on the prima facie evidence and on the basis of the sale deed the entire land of the plot was transferred to the vendee and the petitioners have come into possession of the entire area of survey no. 1162 paiki. The entries made in the name of the petitioners include the land 3526 sq. mtr. If the petitioners have been allotted the entire land of plot in dispute they are entitled for the same and the entries made in their favour the entry no. 6682 dated 14-6-92 approved on 15-7-93 made in favour of the petitioners is justified. In respect of this entry first two authorities have recorded the findings after hearing the parties that the entire land of aforesaid survey number was sold to Shri Uttar Pradesh Coop. Housing Society and that has come into share of the petitioners and the entry made in their favour was justified, legal and valid. The findings recorded by the Tribunal on the basis of the permission and release under provisions of ULC Act, Bombay Tenancy Act and calculation of the value, and stamp fee paid on the sale deed are not sustainable in the eye of law and the Tribunal was not justified in reversing the findings arrived at by the Collector and Dy. Collector in the mutation proceedings. Though the contention of the

learned counsel for the respondent no. 5 executor is that the land admeasuring 7245 sq. mtr. was partitioned and was allotted to the petitioners, that very land was only transferred is not sustainable in the eye of law inasmuch as the executor and the deceased had sold that entire land of survey no. 1162 paiki including 3526 sq. mtr. and that will go to the petitioners. Even if it is assumed that the stamp fees for the whole area of the property in dispute was not paid, it is for the registration department to recover the stamp fees for the rest of the area from the petitioners. When the entire area of plot has been sold to the Shri Uttar Pradesh Coop. Housing Society Ltd. and later on that was allotted to the petitioners.

24. Learned counsel for the petitioners also submitted that the respondent no. 5 who has no locus standi and Shri Uttar Pradesh Coop. Housing Society that has already ceased to exist have been made as party before the appellate authority and revisional authority and Tribunal. As such the appeals and the revisions and revision before the Tribunal were not maintainable at all and after executing the sale deed for the entire area of aforesaid both survey number the executor has no right at all to claim any portion of that land. In my view the Tribunal has failed to consider the genesis, letter and spirit of the entire document of sale deed. It is mentioned in para 8 and 9 of the sale deed that the sale deed has been executed in respect of the entire land of aforesaid the survey number. The Tribunal was not justified in considering the sale deed in piecemeal in view of the provisions of Section 91 and 94 of the Evidence Act. The executor has no right for the same as he himself had transferred the entire area of the aforesaid survey number by the registered sale deed.

25. The principle of promissory estoppel would also certainly estop the respondent no. 5 executor from backing out of his obligation of transferring and handing over the entire area of the survey no. 1162 paiki to the Shri Uttar Pradesh Coop. Housing Society Ltd. by registered sale deed. The Supreme Court in the case of Gujarat Financial Corporation Vs. M/s. Lotus Hotel Pvt. Ltd., reported in AIR 1983 SC 848 has reiterated and confirmed the view regarding the principle of promissory estoppel, taken in the case of Motilal Padampat Sugar Mills Co. Vs. State of U.P. reported in AIR 1979 SC 621 at page 631 which reads as under :

"The true principle of promissory estoppel, therefore, seems to be that where one party has

by his words or conduct made to the other a clear and unequivocal promise which intended to create legal relation or affect, a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."

26. On the basis of the above discussion, the authority making the entry, the authority approving the same, the Dy. Collector in Appeal and the Collector in revision were justified in holding the entry no. 6682 as correct on the basis of prima facie evidence of sale deed. The Tribunal in revision has committed manifest error on the face of the record and its findings are perverse and not sustainable in the eye of law.

27. After careful consideration of the entire submissions and arguments as well as the material on record, I come to a conclusion that the Tribunal was not justified in interfering with the findings of fact recorded by the District Collector, Dy. Collector, and entry approving authority in respect of the entry no. 6682 dated 14-6-1992 approved on 15-7-1993, which is just and correct on the basis of prima facie evidence of the sale deed itself. Thus, the judgment and order of the Tribunal is liable to be quashed and set aside.

28. Accordingly, both the petitions are allowed and the judgment and order of the Government of Gujarat dated 1-9-94 in Revision Application No. SSRD/HKP/AMD/25/94 is quashed and set aside and the findings recorded by the Dy. Collector and confirmed by the Collector are maintained. Rule is made absolute in both the petitions, with no order as to costs.

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/JVSatwara/

Correction made vide order dt. 31-11-99.

Order below Speaking to Minutes in the judgment dated 24-3-1999 passed in Special Civil Application No. 10790 of 1994 with Spl. C.A. No. 10791 of 1994.

Learned counsel for the petitioner submitted that in the above judgment the word "Shri" before the words "Uttar Pradesh Coop. Housing Society Ltd." is missing and is inadvertently not transcribed. The correct name of the petitioner society is "Shri Uttar Pradesh Coop. Housing Society Ltd." Therefore, the word "Shri" is required to be inserted and is modified to that effect in the entire judgment.

Accordingly, the word "Shri" is inserted before the words "Uttar Pradesh Coop. Housing Society Ltd." and the is modified to that effect and now the same shall be read as " Shri Uttar Pradesh Coop. Housing Society Ltd." in the entire judgment and correction be carried out in judgment.

Date:30-11-1999. (Kundan Singh, J.)